

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**TAC Group, Ltd.,**

**Plaintiff,**

**V.**

**Federal Insurance Co., Joe Gordon, David Wright, Christopher Witt, David Driggers, Jerry Loe, Verari Systems, Inc., Verari Technologies, Inc. and Cirrascale Corporation,**

**Defendants.**

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**Civil Action No. 4:10-CV-02696**

**DEFENDANTS VERARI SYSTEMS, INC.'S, CHRISTOPHER WITT'S, DAVID  
WRIGHT'S, DAVID DRIGGERS', AND JERRY LOE'S  
ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendants Verari Systems, Inc. (“**VSI**”), Christopher Witt, David Wright, David Driggers, and Jerry Loe (collectively the “**VSI Defendants**”) answer Plaintiff’s Second Amended Complaint (“**Complaint**”) as follows:

In its Complaint, Plaintiff has not used paragraph numbering or conventional paragraph structure. As a result, the VSI Defendants are unable to respond in the traditional numbered-paragraph format.

**I.**

1. The VSI Defendants are without knowledge or information sufficient to form a belief as to whether Plaintiff is a limited partnership doing business in Houston, Harris County, Texas and therefore deny the allegations.

2. As to the Federal Insurance Company, the VSI Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore deny the allegations.

3. Defendant Wright hereby files his answer.

4. Defendant Witt hereby files his answer.

5. Defendant Driggers hereby files his answer.

6. Defendant Loe hereby files his answer.

7. Defendant VSI hereby files its answer.

8. As to Defendants Verari Technologies, Inc. and Cirrascale Corporation, the VSI Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations of that paragraph and therefore deny the allegations.

## **II.**

9. The next paragraph of the Complaint states a conclusion of law to which no response is required.

## **III. ASSUMED NAMES**

10. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. This cause of action does not appear to be directed at the VSI Defendants. The VSI Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations of this paragraph and therefore deny the allegations.

## **IV. VICARIOUS LIABILITY**

11. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants admit that when Defendants Witt, Wright, Driggers or Loe performed actions relevant to this

dispute, such actions were done in the normal and routine course and scope of their employment. The VSI Defendants deny the remaining allegations contained in Subsection IV.

#### **V. JOINT ENTERPRISE**

12. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in Subsection V.

#### **VI. CONSPIRACY**

13. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in Subsection VI.

#### **VII. JOINT AND SEVERAL LIABILITY**

14. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in Subsection VII.

#### **VIII. FACTUAL BACKGROUND**

15. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in Subsection VIII.

#### **IX.**

#### **CAUSES OF ACTION AGAINST WRIGHT, WITT, DRIGGERS, LOE, VSI, VERARI TECHNOLOGIES, INC., AND CIRRASCALE CORPORATION**

16. The VSI Defendants reiterate and incorporate the answers set forth in the previous paragraphs as if fully set forth herein.

**A. Breach of Contract**

17. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in the “Breach of Contract” section of Subsection IX.

**B. Fraudulent Inducement**

18. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in the “Fraudulent Inducement” section of Subsection IX.

**C. Conversion**

19. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in the “Conversion” section of Subsection IX.

**D. Civil Theft**

20. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in the “Civil Theft” section of Subsection IX.

**E. Negligent Misrepresentation**

21. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in the “Negligent Misrepresentation” section of Subsection IX.

**F. Tortious Interference With Contract**

22. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants

deny the allegations contained in the “Tortious Interference With Contract” section of Subsection IX.

**G. Breach of Fiduciary Duty**

23. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in the “Breach of Fiduciary Duty” section of Subsection IX.

**H. Quantum Meruit**

24. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in the “Quantum Meruit” section of Subsection IX.

**I. Damages**

25. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in the “Damages” section of Subsection IX. The VSI Defendants specifically deny that all conditions precedent to Plaintiff’s recovery have been fulfilled.

**X.**

**CAUSES OF ACTION AGAINST FEDERAL INSURANCE CO.**

26. The VSI Defendants reiterate and incorporate the answers set forth in the previous paragraphs as if fully set forth herein.

**A. Breach of Contract**

27. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. To the extent this cause of action is pled against any of the VSI Defendants, the VSI Defendants deny the allegations contained in the “Breach of Contract” section of Subsection X.

**B. Bad Faith Insurance Practices**

28. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. To the extent this cause of action is pled against any of the VSI Defendants, they deny the allegations contained in the “Bad Faith Insurance Practices” section of Subsection X.

**C. Texas Deceptive Trade Practices Act**

29. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. To the extent this cause of action is pled against any of the VSI Defendants, the VSI Defendants deny the allegations contained in the “Texas Deceptive Trade Practices Act” section of Subsection X.

**D. Breach of Warranty**

30. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. To the extent that this cause of action is pled against any of the VSI Defendants, the VSI Defendants deny the allegations contained in the “Breach of Warranty” section of Subsection X.

**E. Negligence**

31. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. To the extent this cause of action is pled against any of the VSI Defendants, the VSI Defendants deny the allegations contained in the “Negligence” section of Subsection X.

**F. Fraud and Misrepresentation**

32. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. To the extent that these

causes of action are pled against any of the VSI Defendants, the VSI Defendants deny the allegations contained in the “Fraud and Misrepresentation” section of Subsection X.

**G. Damages**

33. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. To the extent Plaintiff seeks damages from any of the VSI Defendants for any of the causes of action referenced above, the VSI Defendants deny the allegations contained in the “Damages” section of Subsection X.

**XI. ATTORNEYS’ FEES**

34. The VSI Defendants reiterate and incorporate the answers set forth in the previous paragraphs as if fully set forth herein.

35. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in Subsection XI.

**XII. PUNITIVE DAMAGES**

36. This section is written without a discernable paragraph structure, which prevents the VSI Defendants from responding on a paragraph-by-paragraph basis. The VSI Defendants deny the allegations contained in Subsection XII.

**XIII. AFFIRMATIVE DEFENSES**

**A. First Affirmative Defense – Waiver**

37. Through its course of dealing with the VSI Defendants and VSI, Plaintiff has waived any breach of contract claim it may have against any of the VSI Defendants.

**B. Second Affirmative Defense – Estoppel**

38. Through its course of dealing with the VSI Defendants and VSI, Plaintiff is estopped from asserting any breach of contract claims it may have against any of the VSI Defendants.

**C. Third Affirmative Defense – Assignment for Benefit of Creditors**

39. VSI has consummated an Assignment for the Benefit of Creditors as provided by California law. The time during which a claim could be brought against VSI has passed.

**D. Fourth Affirmative Defense – Merger**

40. The Asset Sale Agreement that is the basis of this action expressly states that it and “the other agreements contemplated hereby set forth the entire understanding of the parties and supersede all prior and contemporaneous agreements, undertakings or discussions, whether oral or written.” Thus, any pre-contractual representations or discussions cannot be the basis for a claim by Plaintiff.

**XIV. PRAYER**

41. The VSI Defendants deny that Plaintiff is entitled to any relief.

42. The VSI Defendants request that Plaintiff take nothing; that the VSI Defendants be awarded their costs; and that VSI Defendants be awarded such additional relief to which they may be entitled.



Dated: August 8, 2011

Respectfully submitted,

/s/ Robert S. Harrell

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed with the Court's electronic case filing (ECF) system on August 8, 2011, which caused an electronic copy of this document to be served on all counsel of record who have appeared in this matter.

/s/ Roberts S. Harrell

Robert S. Harrell